

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

CAPITAL ONE CONSUMER DATA
SECURITY BREACH LITIGATION

THIS DOCUMENT RELATES TO ALL
ACTIONS

MDL No. 1:19-MD-2915 (AJT/JFA)

**APPLICATION OF JOHN YANCHUNIS FOR CO-LEAD COUNSEL AS PART OF THE
SIEGEL-RIEBEL-YANCHUNIS SLATE**

John Yanchunis, counsel in *Baird v. Capital One Financial Corporation, et al.*, Case Nos. 1:19-cv-979-LMB-JFA and 3:19-cv-555-JAG (E.D. Va.), seeks appointment as Lead Counsel and nominates as fellow Co-Leads Norman E. Siegel, of Stueve Siegel Hanson LLP and Karen Hanson Riebel, of Lockridge Grindal Nauen P.L.L.P. Mr. Yanchunis, along with Mr. Siegel and Ms. Riebel, bring together unmatched experience in major data breach and privacy class litigation, each having held leadership in the lion's share of major data breach cases across the country, including the breaches involving Equifax, Yahoo, Facebook, the Office Personnel Management Data ("OPM"), Home Depot, and Target, just to name a few. And that experience extends far beyond simply seeking leadership and opposing motions to dismiss; this collection of counsel have heavily litigated, conducted significant discovery, and briefed essentially every aspect of privacy class cases, including deposing multiple corporate representatives, Chief Information Security Officers ("CISOs"), and technical and damages witnesses and experts. The proposed co-leads have also already commenced substantive development of Plaintiffs' claims here by retaining noted experts in cybersecurity and damages and charging them to engage in the development of the case. Accordingly, Mr. Yanchunis, along with Ms. Riebel and Mr. Siegel, should be appointed here.

A. Relevant Professional Experience

Mr. Yanchunis leads Morgan & Morgan's class action group. A detailed statement of his relevant cases is attached as **Exhibit A**. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with over 500 lawyers in more than 50 offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.¹ Mr. Yanchunis—whose career as a trial lawyer began 37 years ago following the completion of a two-year clerkship with United States District Judge Carl O. Bue, Southern District of Texas, (now retired)—has efficiently and expeditiously led many privacy MDL and non-MDL class action proceedings, including as Lead or Co-Lead Counsel, as detailed below with each case's current status denoted in parentheses.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). He also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

¹ Mr. Yanchunis's firm, Morgan & Morgan, will self-fund the litigation and will not seek contributions from those not named in the Court's appointment order.

Mr. Yanchunis's MDL data breach experience includes: *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) ("Yahoo") (Lead Counsel) (final hearing seeking approval of \$117,500,000.00 common fund settlement set for April 2, 2020); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final hearing to approve \$380.5 million fund set for December 19, 2019); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) ("OPM") (member of the Executive Committee) (dismissal on standing grounds recently reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); and *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers upheld by the 8th Circuit).

Mr. Yanchunis's court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, including: *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) ("Facebook") (consolidated complaint filed February 2019; motion for class certification argued on November 6, 2019); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) ("Kimpton") (Lead Counsel) (final approval of class settlement entered July 11, 2019); and *In re: Arby's Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of class settlement entered June 6, 2019).

Mr. Yanchunis's experience in these major data breach matters extends far beyond simply briefing threshold issues and negotiating settlements. Rather, Mr. Yanchunis has personally

deposed corporate representatives and CISOs in cases such as *Yahoo*, *Kimpton*, and *Facebook*. In *Kimpton*, the Court ordered the parties to proceed first with discovery and summary judgment on liability and damages as to the named plaintiff only. Accordingly, nearly a dozen depositions and production and review of tens of thousands of pages of documents followed. In *Yahoo*, Defendants produced more than 9 million pages of documents, Plaintiffs deposed nine witnesses, and Plaintiffs provided reports for, and defended depositions of, their four expert witnesses. And, Mr. Yanchunis's *Yahoo* and *Facebook* teams briefed class certification and *Daubert* motions.

Hence, the breadth of Mr. Yanchunis's data breach experience is equaled only by its depth.

Mr. Yanchunis is also very active in speaking on privacy related issues, including at international conferences, having spoken recently at the University of Haifa's 2019 Class Action Conference, in April 2019, in Haifa, Israel. Mr. Yanchunis also routinely speaks domestically on privacy and cybersecurity related topics including at: the NetDiligence Cyber Risk Forum in Philadelphia, PA (June 2017); the Consumer Protection Law Committee Convention in Boca Raton, FL (June 2017); several Harris Martin seminars, including MDL Conference, Equifax, St. Louis, MO (Nov. 2017), and MDL Conference Marriott Data Breach Litigation Conference, Miami, FL (Jan. 2019); the New Jersey Assoc. for Justice, Atlantic City, NJ (May 2018); the Los Angeles Class Action Conference, Costa Mesa, CA (Jan. 2019); the Class Action Mastery Forum, University of San Diego (Jan. 2019); and Mass Torts Made Perfect, Las Vegas, Nevada (Oct. 2019). He has also been selected to present at the 2020 Global Class Actions Symposium's Privacy/Breach of Data Protection section held at The Law Society in London, England, in June 2020. Mr. Yanchunis is also a member of the Sedona Conference, participating in Working Group 11, which focuses on data security and privacy liability. He also spoke before the Sedona Conference at its February 2019 meeting in Houston, Texas.

Considering this vast experience and commitment to the cybersecurity arena, Mr. Yanchunis, along with Mr. Siegel, were recently recognized by Law360 as two of its three Cybersecurity MVPs. Similarly, in 2016, Mr. Yanchunis was recognized by the National Law Journal as its 2016 Trailblazer in the Area of Cybersecurity & Data Privacy.

B. Commitment, Availability, and Steps Already Taken

Mr. Yanchunis's chief time commitments over the upcoming year relate to *Yahoo*, where a final approval hearing is set for April 2, 2020, and *Facebook*, where a motion for class certification is fully briefed and was argued on November 6, 2019. With those matters concluding, he has the time and, without question, the desire to commit his attention and resources to this case.

Mr. Yanchunis is prepared, and excited, to personally discharge all duties of Lead Counsel, including executing on the matters identified by the Court prior to the Initial Status Conference and attending that hearing. Indeed, Mr. Yanchunis's typical practice is to take a corporate representative deposition very early on in data breach cases—see ¶ 10.b.ii of its Pretrial Order #1 [Doc. 3 at 15]—and he did so in *Yahoo* and *Facebook*. Likewise, Mr. Yanchunis typically retains experts very quickly after filing data breach cases, as was done here, and hence is able to disclose those experts, including, here, Mary Frantz, the Founder and Managing Partner of Enterprise Knowledge Partners (EKP), a premier provider of cyber security, forensics, compliance and technology strategy services; and Ian Ratner, a CPA and a founding partner of Glass Ratner, with 30 years of experience in public accounting, forensic accounting, and business valuations. These experts are already hard at work on behalf of the class in this matter. Moreover, Mr. Yanchunis's firm employs two retired FBI agents, who have also been investigating the circumstances surrounding the breach at issue here. Finally, Mr. Yanchunis's ability to work collaboratively with all is well known, as reflected in his many prior appointments.

Dated: November 18, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

By: /s/ John G. Harnishfeger
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